SURUHANJAYA PERKHIDMATAN AWAM MALAYSIA

v.

NOORDIN BIN HASSAN

COURT OF APPEAL, KUALA LUMPUR
DATO' MAHADEV SHANKAR JCA
DATO' V.C. GEORGE JCA
DATO' HJ. ABDUL MALEK BIN HJ. AHMAD J
[CIVIL APPEAL NO. J-01-1-95]
16 AUGUST 1995

ADMINISTRATIVE LAW: *Dismissal - Dismissal of public servant - Whether rules of natural justice observed by dismissing authority - Remedies - Certiorari - High Court issuing certiorari to quash order of dismissal - Whether order for certiorari unjustified - Whether not a proper case for certiorari.*

EVIDENCE: *Dismissal of public servant - Whether unlawful - Respondent alleged to have smuggled uncustomed goods and handed goods to third party - Third party charged and convicted but respondent not implicated - Whether non-implication of respondent open to inference that he was innocent - Finding of innocence by trial Judge - Whether proper.*

EVIDENCE: *Section 114(g) Evidence Act 1950 - Adverse inference - Dismissal of public servant - Allegation that dismissing authority only gave a day's notice for inquiry but refused request for adjournment - Failure to produce available material evidence to support allegation - Whether could give rise to adverse inference.*

This was an appeal against an order of *certiorari* whereby the learned Judge quashed the decision of the appellant who dismissed the respondent as a customs officer. The facts were that pursuant to a disciplinary action taken against him under the Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980, the respondent was found to have "smuggled goods from Singapore and handed them to one Wong Hong Hua (Wong) in Johore Bahru", and on that ground, was dismissed from service. Prior to the dismissal, the respondent was given notice to attend a hearing before the Committee of Inquiry, but the respondent, somehow, had not attended it, with the result that the inquiry was convened in his absence. Before the trial Judge, the respondent alleged that the appellant had given him only a day's notice for the hearing, thereby giving him insufficient time to prepare his case. He also alleged that despite the short notice his request for a postponement had been refused, and that explained his absence in the inquiry.

In ruling the dismissal unlawful and null and void, the learned Judge accepted the respondent's story about the one day notice, and the turning down of the request for postponement, and concluded that the appellant had acted in a way contrary to the rules of natural justice. The facts further showed that Wong had been convicted for participating in bringing in the uncustomed goods, but the case and the charges against Wong, however, did not in any way implicate the respondent. The appellant knew about the non-implication of the respondent but, apparently, did not consider that factor when dismissing the respondent. This omission to consider the respondent's apparent innocence was ruled by the trial Judge to have vitiated the appellant's decision. In this appeal the appellant contended that the respondant had never requested for any the adjournment and that, in any case, the dismissal was proper and made in accordance with the requirements of the law.

Held:

Per Mahadev Shankar JCA (delivering the judgment of the Court):

[1] It is the duty of a person applying for *certiorari* to show the utmost goodfaith, and not be selective, in the presentation of the material upon which he wishes the Court to rely. In this case, the respondent did not acknowledge receipt of the notice of hearing and no explanation was given why he did not return the acknowledgement receipt letter. There was thus no evidence to suggest that he had received the notice the day before the hearing date. And, while alleging that the request for a postponement had been made, nowhere did he say when he made the request. In a situation such as this, where the respondent was relying so heavily on the alleged refusal to grant an adjournment, the failure to produce these material evidence must result in the invocation of s. 114(g) of the Evidence Act, resulting in turn, in adverse inference being drawn against the respondent. The least the respondent could and should have done was to produce the record of the inquiry. This he has not done.

[2] The finding by the trial Judge that the respondent had asked for an adjournment of the hearing on 17 November 1993 was against the weight of evidence. The content and the weight of the available evidence goes overwhelmingly against this finding. Even putting it at its lowest there was a sharp conflict of evidence as to whether the respondent had ever asked for that adjournment. Be that as it may, on this point, there is no reason for the learned Judge to have preferred the bare word of the respondent to the categoric assertion of public officers who had no axe to grind, and who had contended otherwise.

[3] It was unjustified of the trial Judge to have come to the conclusion that, if in fact the respondent had handed over the smuggled goods to Wong, the respondent would have been jointly charged with Wong, and since this did not happen it must have pointed to the respondent's innocence. For, clearly, the omission to charge the respondent jointly with Wong did not in any way prove that the respondent was innocent. Also, the evidence tendered at the inquiry on 17 November 1993 was not before him. In addition, the facts showed that the respondent had only produced a part of the notes of evidence of the criminal trial, which were not certified, for his perusal. In the circumstances, the trial Judge had embarked on mere speculation when he adverted to the proper inferences that the Committee should have drawn from the facts of the case against Wong. This Court therefore is of the view that this was not a proper case for *certiorari*.

[Appeal allowed].

***[Bahasa Malaysia** Translation of Headnotes]*

***UNDANG-UNDANG PENTADBIRAN:** Pemecatan - Pemecatan kakitangan awam - Samada kaedah-kaedah keadilan asasi dipatuhi oleh pihak berkuasa pemecatan - Remedi-remedi - Certiorari - Mahkamah Tinggi mengeluarkan certiorari bagi membatalkan perintah pemecatan - Samada perintah untuk certiorari tidak wajar - Samada tidak merupakan kes yang sesuai untuk certiorari.*

***KETERANGAN:** Pemecatan kakitangan awam - Samada menyalahi undang-undang - Responden dikatakan telah menyeludup barangan tak bercukai dan telah menyerahkan barangan kepada pihak ketiga - Pihak ketiga dituduh dan disabitkan tetapi responden*

tidak dilibatkan - Samada ketidak-libatan responden terbuka kepada inferens bahawa beliau tidak bersalah - Pendapat tidak bersalah oleh Hakim perbicaraan - Samada bersesuaian

KETERANGAN: *Seksyen 114(g) Akta Keterangan 1950 - Inferens yang bertentangan - Pemecatan kakitangan awam - Pengataan bahawa pihak berkuasa pemecatan telah hanya memberi notis satu hari untuk siasatan tetapi menolak permintaan untuk penangguhan - Kegagalan untuk mengemukakan keterangaan material bagi menyokong pengataan - Samada boleh membangkitkan inferens yang bertentangan.*

Ini merupakan rayuan terhadap satu perintah *certiorari* di mana Hakim yang bijaksana telah membatalkan keputusan perayu yang telah memecat responden sebagai seorang pegawai kastam. Faktanya adalah bahawa selaras dengan tindakan tata-tertib yang diambil terhadapnya di bawah Perintah Awam Pegawai Awam (Kelakuan & Tatatertib) Bab D 1980, responden didapati telah menyeludup barangan daripada Singapura dan menyerahkannya kepada seorang yang bernama Wong Hong Hua (Wong) di Johor Bahru, dan atas alasan itu, telah dipecat daripada perkhidmatan. Sebelum pemecatan itu, responden telah diberikan notis untuk menghadiri satu perbicaraan di hadapan Jawatankuasa Siasatan**,** tetapi responden namun begitu telah tidak menghadirinya, yang mana mengakibatkan siasatan tersebut telah dimulakan dalam ketidak-hadiran beliau. Di hadapan Hakim perbicaraan, responden mengatakan bahawa perayu telah hanya memberinya satu hari notis sahaja bagi perbicaraan, dengan itu tidak memberikannya masa yang mencukupi untuk menyediakan kesnya. Beliau juga mengatakan bahawa sungguhpun terdapat notis yang sebegitu singkat, permintaannya untuk satu penangguhan ditolak, dan hal itu menjelaskan ketidak-hadiran beliau dalam siasatan tersebut.

Dalam memutuskan pemecatan itu menyalahi undang-undang serta batal dan tak sah, Hakim perbicaraan yang bijaksana telah menerima alasan responden itu mengenai notis selama satu hari, dan penolakan terhadap permintaan untuk penangguhan dan memutuskan bahawa perayu telah bertindak menurut cara yang bercanggahan dengan kaedah-kaedah keadilan asasi. Fakta-fakta tersebut selanjutnya menunjukkan bahawa Wong telah disabitkan kerana turut serta dalam membawa masuk barangan-barangan tak bercukai tersebut, tetapi kes serta tuduhan terhadap Wong, walaubagaimanapun, tidak dalam apa cara pun melibatkan responden. Perayu mengetahui tentang ketidak-libatan responden itu tetapi, nampaknya, tidak memberikan pertimbangan kepada fakta itu ketika memecat responden. Peninggalan untuk menimbangkan ketakbersalahan responden telah diputuskan oleh Hakim perbicaraan sebagai telah melemahkan keputusan perayu. Dalam rayuan ini, perayu menegaskan bahawa perayu telah tidak pernah meminta apa-apa penangguhan dan bahawa, dalam apa-apa keadaan pun, pemecatan tersebut adalah wajar dan dibuat menurut kehendak undang-undang.

Diputuskan:

Oleh Mahadev Shankar HMR (menyampaikan penghakiman Mahkamah):

[1] Ianya merupakan kewajipan seseorang yang memohon untuk mendapatkan *certiorari* bagi secara pentingnya menunjukkan sifat sucihati tanpa apa-apa pilihan, dalam mengemukakan bahan di atas yang mana beliau berharap Mahkamah akan bergantung. Dalam kes ini, responden tidak mengakui penerimaan notis perbicaraan dan tidak terdapat penjelasan mengapa beliau tidak mengembalikan surat pengesahan penerimaan tersebut. Dengan itu tidak terdapat keterangan bagi menyarankan bahawa beliau telah menerima notis tersebut satu hari sebelum tarikh perbicaraan. Dan sementara mendakwa bahawa permintaan untuk satu penanguhan telah dibuat, tidak terdapat di mana-mana pun bila beliau membuat

permintaan tersebut. Dalam situasi seperti ini, di mana responden telah bergantung sesungguhnya ke atas keengganan yang dikatakan untuk memberikan satu penangguhan, kegagalan untuk mengemukakan keterangan material ini seharusnya mengakibatkaan penyeruan kepada s. 114(g) Akta Keterangan yang sebaliknya pula mengakibatkan, suatu inferens yang bercanggahan dibuat terhadap responden. Responden sekurang-kurangnya telah seharusnya mengemukakan rekod siasatan. Ini tidak dilakukan oleh beliau.

[2] Keputusan oleh Hakim perbicaraan bahawa responden telah meminta satu penangguhan bagi perbicaraan pada 17 November 1993 adalah bertentangan dengan keberatan keterangan tersebut. Kandungan serta keberatan keterangan yang terdapat menentang keputusan ini dengan cara yang keterlaluan. Walaupun memberikannya perhatian yang amat sedikit, namun terdapat perselisihan keterangan yang ketara mengenai samada responden telah pernah memohon untuk mendapatkan penangguhan itu. Namun begitu, dalam hal ini, tidak terdapat alasan bagi Hakim yang bijaksana untuk memilih perkataan responden yang tidak berasas daripada memilih penegasan kategorik pegawai-pegawai awam yang tidak mempunyai alasan untuk niat buruk dan yang mana telah menegaskan sebaliknya.

[3] Ianya adalah tidak wajar bagi Hakim perbicaraan mencapai keputusan bahawa, jika pada hakikatnya responden telah menyerahkan barangan yang diseludup itu kepada Wong, responden tentunya telah dituduh bersama Wong, dan oleh kerana perkara itu tidak berlaku ianya haruslah menunjukkan ketakbersalahan responden. Oleh itu, jelaslah, peninggalan untuk menuduh responden bersesama dengan Wong tidak dalam apa cara pun membuktikan bahawa responden adalah tak bersalah. Juga, keterangan yang dikemukakan kepada siasatan pada 17 November 1993 tidak terdapat dihadapannya. Tambahan pula, fakta-fakta menunjukkan bahawa responden telah hanya mengemukakan sebahagian dari nota-nota keterangan perbicaraan jenayah itu, yang mana tidak disahkan untuk penelitiannnnya. Dalam keadaan yang sedemikian, Hakim perbicaraan telah bertindak semata-mata atas spekulasi sahaja bilamana beliau merujuk kepada inferens yang sesuai yang mana Jawatankuasa seharusnya telah ambil daripada fakta-fakta kes terhadap Wong. Mahkamah ini dengan itu berpendapat bahawa ini tidak merupakan suatu kes yang wajar bagi mendapatkan *certiorari.*

[Rayuan dibenarkan].

Cases referred to:
Najar Singh v. the Government of Malaysia & Another [1974] 1 MLJ 141 ***(refd)***
Ghazi bin Mohd. Sawi v. Mohd. Haniff bin Omar, Ketua Polis Negara Malaysia & Another [1994] 2 AMR 1277 ***(refd)***

Legislation referred to:
Rules of the High Court 1980, O. 53 r. 1(2)
Evidence Act, s. 114(g)

For the appellant - Mohd Zawawi bin Salleh (Teo Say Eng with him); Senior Federal Counsel
For the respondent - Gana Muthusamy; M/s. Gana Muthusamy & Co.

JUDGMENT

Mahadev Shankar JCA:

This is an appeal against an order of *certiorari* whereby the Judge in the High Court Johor Bahru quashed the decision of the Public Service Commission dismissing the respondent as a customs officer with effect from 11 January 1994.

By a letter dated 5 May 1993 the appellant (hereafter referred to as the PSC) required the respondent to show cause why he should not be dismissed from service by reason of a charge that he, whilst on duty as a customs officer, on 12 October 1989 at Johor Bahru did smuggle certain goods (set out in a list attached to the letter) from Singapore and handed them over to one Wong Hong Hua at the roadside near Taman Daya, Johor Bahru. The charge further alleges that the act of handing over was witnessed by another customs officer from Johor Bahru. The show cause letter was accompanied by an acknowledgement of receipt which the respondent was required to sign and return which the respondent did on 25 May 1993.

On 8 June 1993 the respondent purported to show cause in a long letter. Briefly the respondent denied the charge and said on 12 October 1989 he had gone to Singapore with two of his friends by the name of Haji Mansor bin Haji Yusof and Mohd. Noh bin Ismail. He said he could call these two persons to show that they did not go to Singapore to buy the goods listed in the charge. He further said that at about 1.00 p.m. they had returned from Singapore and that he had stopped over at the house of one Nasir bin Che Mat at Kempas, Johor Bahru. At 2.30 p.m. he left this place for work at the Johor Causeway because he was on duty from 3.00 p.m. to 11.00 p.m. He stated further that he never was at the roadside near Taman Daya as charged and that he could call Nasir to prove that he was in the house of the latter at the material time.

The respondent denied he knew Wong Hong Hua and queried why if he in fact had handed the goods listed to Wong Hong Hua, he was not arrested when he allegedly handed over the goods. Besides this, he claimed, he got to know later that Wong Hong Hua had been charged in Court and had admitted his guilt to the offence of knowingly participating in bringing in uncustomed goods. The respondent stated that it would not have been necessary for Wong Hong Hua to admit his guilt if indeed it was the respondent who had smuggled the goods in. The respondent demanded that there be an inquiry so as to permit him to cross-examine the witnesses against him and to call witnesses in his own defence.

The PSC issued a letter dated 5 November 1993 stating that a Committee of Inquiry had been set up to investigate the matter further, examine the witnesses and receive relevant documents on 17 November 1993 at 9.00 a.m at the Bilik Mesyuarat; Bahagian Pencegah, Jabatan Kastam dan Eksais Di Raja, Johor Bahru. The letter specifically informed the respondent that he was given leave to appear before the committee in order to cross-examine the witnesses and examine the relevant documents which were to be used in the inquiry.

This letter was sent to the respondent on behalf of the Ketua Pengarah Kastam by Puan Habsah bte Haji Harun on 10 November 1993 together with the usual accompanying letter of acknowledgement of receipt. The respondent received this letter but he did not return the acknowledgement of receipt. The date that he received the letter was of crucial importance in this case.

Before us it was strenuously submitted that the respondent received this letter only on 16 November 1993, and that upon receipt of this letter the respondent had asked the Timbalan Pengarah Kastam, Puan Zaleha bte Hamzah, for an adjournment but that this was refused. Thereafter on 8 February 1994 the respondent says he received a letter dated 25 January 1994 from the secretary of the PSC who stated that at its meeting on 10 January 1994 the PSC had carefully considered the case against the respondent in its entirety and had decided that he be dismissed from service with effect from 11 January 1994.

On 21 February 1994 the respondent filed a motion in the High Court, Johor Bahru for leave to apply for an order of *certiorari*. This application was supported by an undated statement under O. 53 r. 1(2) of the Rules of the High Court 1980 and an affidavit he affirmed on 21 February 1994.

Paragraphs 6 and 7 of this affidavit reads:

> 6. On or about 16 November 1993 I received a letter from the Public Service Commission, Malaysia dated 5 November 1993 instructing me to attend an oral hearing at the Royal Malaya Customs & Excise's office, Johor Bahru, Johor at 9.00 am on 17 November 1993. A copy of the said letter is now produced and marked as "NBH-3".
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> I was not given sufficient time to prepare my case and my request and my Counsel's request for an adjournment was refused.

It is to be noted that paragraph 6 does not say he received the letter on the 16th but on or about the 16th. Since the letter was sent from Kuala Lumpur on 10 January, this could mean any date from the 11th onwards. As to paragraph 7, it is to be emphasised that the respondent was contending that he made a request and that his Counsel also made a request for an adjournment. When and to whom these requests were made were not specified.

In the appeal before us respondent's Counsel contended that the PSC had dismissed the respondent simply upon the material contained in the show cause letter and in the explanation given by the respondent in his letter of 8 June 1993. He said that the refusal to grant the adjournment vitiated the dismissal and suggested that we infer that no inquiry had in fact taken place on 17 November 1993 or at all. But the respondent's Counsel was not previously involved in this matter and his knowledge of what actually went on at the inquiry stage or in the High Court did not go beyond the four corners of the appeal record which we must now consider in depth.

The only material before the Court at the uncontested hearing of the application for leave on 22 July 1994 was the motion, the statement pursuant to O. 53 r. 1(2) and the respondent's affidavit affirmed on 21 February 1994. After leave was granted, the supporting documents for the motion proper were the same affidavit and statement aforesaid.

In her affidavit of 28 September 1994 Puan Habsah bte Haji Harun confirmed the notice of the inquiry was sent on 10 November 1993, that the respondent did not return the acknowledgement receipt and neither the respondent nor his Counsel made any request whatsoever for the postponement of the inquiry fixed on 17 November 1993.

In response to the respondent's contention that the PSC had acted contrary to the rules of natural justice and in excess of its jurisdiction the secretary of the PSC, Encik Abdul Rahman bin Haji Ahmad, affirmed and filed an affidavit dated 29 September 1994. In paragraph 10 of this affidavit he stated:

> 10. Berhubung dengan perenggan 12 Afidavit Pemohon saya sesungguhnya menyatakan bahawa berasaskan kepada keterangan-keterangan dan fakta-fakta kes yang telah dikemukakan untuk pertimbangan Suruhanjaya Perkhidmatan Awam, keputusan untuk membuang kerja Pemohon telah dibuat dengan teratur berasaskan kepada kuasa-kuasa yang telah diberi oleh undang-undang.

The reference to "keterangan-keterangan" and "fakta-fakta kes" tends to suggest that the inquiry was in fact held on 17 November 1993. He went on to say that in arriving at its decision the PSC excluded from its consideration the material presented to the Court in Wong Hong Hua's trial.

The respondent filed a reply affidavit dated 18 October 1994. In this affidavit he said:

> 3. Pada atau lebih kurang 16hb November 1993, saya menerima dari puan Hasimah bte Ahmad, Penguasa Kastam, Cawangan Perkhidmatan Perjawatan dan Latihan, Johor Bahru, satu surat dari Suruhanjaya Perkhidmatan Awam, Malaysia, bertarikh 5 November 1993 dengan saya meminta saya menghadiri pendengaran lisan di Jabatan Kastam & Eksais Di Raja pada pukul 9.00 pagi pada 17 November 1993.
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> 4. Saya memohon merujuk perenggan 4 Afidavit tersebut dan menyatakan bahawa saya meminta Puan Zaleha untuk penangguhan tetapi diberitahu bahawa penangguhan tidak akan diberi dan siasatan akan diteruskan.

Once again he did not specify the actual date when he received the notice, and did not explain why he did not return the acknowledgement receipt letter. For the first time he disclosed that his request for an adjournment was made to Puan Zaleha without any explanation as to why he chose this lady to address his request to. He does not say specifically when he asked her. Nor does he say why he did not ask Puan Habsah or for that matter the secretary of the PSC whose telephone number was given in the notice.

Finally, there is a total omission to clarify who his Counsel was at that time and to whom and when his Counsel also made a request for a adjournment. In a situation such as this where the respondent was relying so heavily on the alleged refusal to grant an adjournment, the failure to produce such material evidence must result in s. 114(g) of the Evidence Act being invoked and an adverse inference must be drawn against the respondent.

Puan Zaleha bte Hamzah too filed an affidavit dated 1 November 1994 in which she categorically denied that any request whatsoever was made to her for an adjournment.

The trial Judge however made a positive finding that the respondent did ask for an adjournment and that since he was told that it would not be granted, had not presented himself at the hearing on 17 November 1993.

The content and the weight of the available evidence is overwhelmingly against these findings. Putting it at its lowest there was a sharp conflict of evidence as to whether the respondent had ever asked for an adjournment. Why should the bare word of the respondent prevail against the categoric assertion of public officers who had no axe to grind. Indeed the proper inference is that the respondent did not ask for an adjournment because had he done so, it would have been a simple enough matter and obviously relevant thing to do, for him to have comprehensively disclosed at the earliest opportunity i.e. on 21 February 1994, when and from whom he and his Counsel had asked for an adjournment and in what circumstances their requests were refused.

We hold that it is the duty of a person applying for *certiorari* to show the utmost good faith in the presentation of the material upon which he wishes the Court to rely. Here the respondent has been very selective. He claims there was an error on the face of the record, but the only relevant record which he has produced is the letter of dismissal dated 25 January 1994. There is no error on the face of that record if it could be called such.

The main ground on which the trial Judge gave *certiorari* was that PSC had unreasonably refused to grant an adjournment. As we have already said there is no credible evidence of such a request having been properly made either before the 17th or on the 17th when the inquiry was to be proceeded with. The respondent does not explain why if he wanted an adjournment he did not ask for it from Puan Hasimah bte Ahmad from whose hands he received the letter or from the secretary in the PSC. Nor is it clear why or how he made his alleged request to Puan Zaleha whose affidavit denying this shows she was then in Kuala Lumpur and was not the person at Headquarters who had the conduct of the matter. The proper tribunal to which the request should have been made would be the Committee of Inquiry, if not earlier at least on 17 November 1993. If as is suggested in his first affidavit that such a request was also made by his Counsel, it must have been at the inquiry to the Committee. It was his duty to produce a record of it or to explain its absence. We are inclined to the view that the inquiry had in fact proceeded on l7 November 1993 probably with the respondent and/or his Counsel being present. As such it was the record of that inquiry that should have been the subject of the *certiorari*. But it was not produced. If on the other hand the inquiry had not taken place at all there should have a very positive evidence to that effect.

The learned trial Judge having found that the request for an adjournment had been unreasonably refused went on to speculate on the proper inferences the Committee should have drawn from the facts of the case against Wong Hong Hua. As has been pointed out the evidence tendered at the inquiry on 17 November 1993 was not before him. Relying solely on the show cause letter and the respondent's reply, he appears to have concluded that if in fact the respondent had handed over the smuggled goods to Wong Hong Hua, the respondent would have been jointly charged with Wong Hong Hua and since this did not happen it pointed to the respondent's innocence.

With respect we do not feel that such a finding was justified. Admittedly the goods which were the subject matter of the charge against Wong were the same goods involved in the charge against the respondent. It is to be noted that the respondent only produced a part of the notes of evidence of the criminal trial. What Wong said in mitigations and what and when the findings of the criminal Court were made is a blank. The notes are not certified and the Court should not take judicial notice of its accuracy. We do not think that the omission to charge the respondent jointly with Wong proves that the respondent was innocent.

We have been very disturbed by the fact that the transaction which is the subject matter of this case took place in 1989 but disciplinary action initiated only in 1993 especially as the charge states that the respondent was seen committing the offence by a customs officer. If clear proof had been forthcoming that a request for an adjournment had been made on 16 or 17 November 1993 and unreasonably refused, this appeal may well have gone the other way and we may have adopted the *dicta* in *Najar Singh v. the Government of Malaysia & Another* [1974] 1 MLJ at page 141 and *Ghazi bin Mohd. Sawi v. Mohd. Haniff bin Omar, Ketua Polis Negara Malaysia & Another* [1994] 2 AMR page 1277 which the trial Judge referred to in his judgment. To avoid the kind of criticism which has been made in this case,

it would be a salutary practice for the PSC to give alleged offenders at least three weeks advance notice to present for the inquiry, since as a rule two weeks at least is given to show cause in the first instance.

But the granting of an adjournment is always a discretionary matter and whether a refusal is so unreasonable as to vitiate the decision reached is a matter to be considered in the light of all the circumstances. The least the respondent could and should have done was to produce the record of the inquiry. This he has not done. This onus which is always upon the applicant has not been discharged in the present case. Putting it at its lowest, he has not ventured to explain the absence of the notes of evidence of the inquiry in the papers which he filed in Court.

In the result we are of the view that this was not a proper case for *certiorari*. We therefore allow this appeal and set aside the order of the Judge with costs both here and the Court below to be paid by the respondent to the appellant.